IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
EASTERN ZONAL BENCH: KOLKATA

<u>Ex.Appeal No.239/08</u>

Arising out of O/O No.54/Commr./CE/Kol.II/Adjn/2007-08 dated 14.01.2008 passed by Commr. of Central Excise, Kolkata II

CCEx., Kol.II

Applicant (s)/Appellant (s)

Vs.

M/s Beekay Steel Indus.

Respondent (s)

<u>Appearance:</u>

Shri A.K.Biswas, Supdt. (A.R.) for the Revenue
Shri B. N. Chattopadhyay, Consultant for the Respondent (s)

CORAM:
HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

<u>Date of Hearing : 09.10.2018</u>
<u>Date of Decision : 09.10.2018</u>

ORDER NO…FO/A/77198/2018

<u>Per Shri P. K. Choudhary :</u>

Heard both sides and perused the appeal records.

2. We find that against the impugned order, both the Revenue and the Assessee, were in appeal before the Tribunal. But the Assessee's Appeal being Ex.Appeal No.195/08, was disposed off by the Tribunal vide Final Order No.A-1241/Kol/08 dated 11.12.2008. Para 5 of the said order is reproduced thus :

> *"5. The foregoing shows that the impugned order has been passed without reference to the quantum of production of specified and non specified goods and without reference to whether the permission to pay duty under Section 3 was correctly given or whether it was reviewed later on the light of*

the cited decisions of the Tribunal and also without examining whether there has actually been any excess utilization of the modvat credit in respect of bars and rods manufactured by the appellants, which are used for construction purposes. Hence, the impugned order cannot be sustained. The same is set aside and the matter is remanded to the original authority for fresh decision with reference to the facts of the case after providing a reasonable opportunity of hearing to the appellants. The appeal is thus allowed by way of remand."

3. Since the Tribunal had already set aside the impugned order and remanded the matter to the original authority for fresh decision, the present appeal filed by the Department, cannot be proceeded with. Accordingly, the instant appeal is dismissed as infructuous.

(Operative part of the order was pronounced in the open Court)

Sd/	**Sd/**
(V.Padmanabhan)	**(P. K. Choudhary)**
Member (Technical)	**Member (Judicial)**

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